

In the Matter of )  
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 )  
Litigation Recovery Trust )  
 )  
Petition for Declaratory Ruling Seeking a )  
Determination that Comsat Corporation Has )  
Violated the Satellite Act in Making Acquisitions )  
Of Stock in Various Other Companies )

## MEMORANDUM OPINION AND ORDER

**Adopted: July 1, 2002**

**Released: July 5, 2002**

By the Commission:

## I. INTRODUCTION

1. On October 8, 2001, Litigation Recovery Trust (“LRT”)<sup>1</sup> filed a Petition for Declaratory Ruling asking the Commission to void a series of purchases by Comsat Corporation (“Comsat”) of stock in a number of foreign companies.<sup>2</sup> LRT asserts that Comsat violated the

LRT represents claims by William L. Whitely, Scott Robb, John T. Whitely and William H. Hallenbeck, and includes the Committee to Restructure the International Satellite Organizations (“CRISO”) and BelCom Minority Shareholders and Claimants Committee (“BelCom Committee”). In 1998, Comsat successfully brought legal action in Delaware Chancery Court against a former defendant shareholder of BelCom, Scott Robb, who is one of those represented by LRT. The court found that Robb was in breach of his fiduciary duty to BelCom by pursuing fraudulent claims against the company. *BelCom, Inc. v. Scott Robb*, Del. Civil Action No. 14663 (April 28, 1998), *aff’d subnom. Scott Robb v. BelCom, Inc.*, 725 A.2d 443 (Jan. 20, 1999), rehearing denied (Feb. 11, 1999). In 2001, the Delaware Chancery court denied William Whitely’s motion to vacate the 1998 *BelCom* decision and a sanctions *Order* issued February 21, 2001. *BelCom v. Robb*, Del. Ch. Case No. 14463, *Order*, August 21, 2001. A New York court has disbarred Scott Robb for conduct arising from actions against BelCom. *In re Robb*, N.Y. App. Div., October 23, 2001. And, the United States Court for the Southern District of New York has (1) dismissed a Securities Act claim brought by LRT against Comsat, *Whitely v. Comsat*, S.D.N.Y. *Order*, Case No. 00 Cir. 9401 (October 29, 2001); and (2) dismissed LRT’s complaint against Comsat, that made various allegations under federal and state law. *Whitely v. Comsat*, S.D.N.Y., Case No. 00 Cir. 9401, *Memorandum and Order* (September 24, 2001).

<sup>2</sup> LRT Petition for Declaratory Ruling (“LRT Petition”), filed October 8, 2001. The acquired corporations are COMSAT Argentina, COMSAT Brazil, COMSAT Colombia, COMSAT Guatemala, COMSAT Mexico, COMSAT Peru, COMSAT Venezuela, COMSAT Turkey, COMSAT Max (India), and COMSAT TTS (People’s Republic of China) (hereafter referred to collectively as “Comsat international subsidiaries”).

Communications Satellite Act of 1962, because, in each case, it acquired the stock without having first obtained authorization from the Commission under Section 201(c)(8) of that Act.<sup>3</sup> LRT asks the Commission to void these acquisitions and, because of what it characterizes as the “egregious behavior” on the part of Comsat, to impose a forfeiture of “at minimum \$25 million.”<sup>4</sup>

2. Comsat filed a motion to dismiss LRT’s petition, arguing that the issue it raised is *res judicata*. Comsat further argues that LRT filed the petition for no legitimate purpose but to harass Comsat and, thus, represents an abuse of process.

3. For the reason set forth below, we dismiss the LRT Petition.

## II. DISCUSSION

4. The sole issue LRT raised in its petition was whether the purchases of the Comsat international subsidiaries violated Section 201(c)(8) of the Satellite Act, because Comsat did not seek prior approval from the Commission for each acquisition. The Commission has already decided whether Comsat needs prior authorization under Section 201(c)(8) for specific stock purchases. In its 1998 *Consolidated Order* denying petitions filed by LRT against Comsat raising this and other issues, the Commission held that Comsat’s acquisition of BelCom, Inc.,<sup>5</sup> without specific prior authorization under the Satellite Act, did not violate that Act.<sup>6</sup> The Commission based its holding on the fact that it had decided, beginning in 1983, to enforce Section 201(c)(8) through the approval of a comprehensive capitalization plan, rather than through separate approvals of each individual proposed transaction.<sup>7</sup> The capitalization plan allowed Comsat to set forth projections of its capital needs for the period covered by the plan. By approving the plan, the Commission allowed Comsat to acquire specific amounts of capital as it needed them without further approval, so long as the acquisitions fell within the scope of the plan. The capitalization plan acknowledged that Comsat was embarking on an expansion of its unregulated activities and concluded that the capitalization plan approach would allow the Commission to monitor those activities and ensure that those activities did not endanger Comsat’s ability to carry out its regulated business.<sup>8</sup> The U.S. Court of Appeals for the Second Circuit dismissed LRT’s appeal of the *Consolidated*

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<sup>3</sup> 47 U.S.C. § 721(c) (8). The Open-Market Reorganization for the Betterment of International Telecommunications Act (“ORBIT Act”), 47 U.S.C. §§ 761-9 (2001), repealed Section 201(c)(8) of the Satellite Act. See 47 U.S.C. § 765(d).

<sup>4</sup> LRT Petition at 19-20.

<sup>5</sup> Lockheed Martin sold BelCom to Weissker, Inc. BVI, a British Virgin Islands company, in late 2001.

<sup>6</sup> In the Matter of Comsat Corporation, *et al.*, *Memorandum Opinion and Order*, FCC 97-422, 13 FCC Rcd 2714, 2726 (“*Consolidated Order*”)(1998), *recon. denied*, 15 FCC Rcd 19,516 (2000). Having decided that the *Consolidated Order* allows us to dispose of LRT’s petition, we do not need to decide whether the issue is *res judicata* in the formal legal sense.

<sup>7</sup> In the Matter of The Consolidated Capitalization Plan for 1983-1985 of the Communications Satellite Corporation, *Memorandum Opinion and Order*, FCC 83-273, 94 FCC 2d 1149, 1157 (1983).

<sup>8</sup> *Id.* at 1158-9.

*Order* and its motion to reinstate its petition before the court.<sup>9</sup>

5. LRT attempts here to re-raise an issue upon which the Commission has acted and which the court upheld on appeal. We find nothing in LRT's present petition that would require us to change the Commission's conclusion regarding the sufficiency of the capitalization plan approach to regulating Comsat's financial activities. Comsat did not need to seek authorization under Section 201(c) (8) of the Satellite Act for the acquisitions of the international subsidiaries named in LRT's petition. Accordingly, we dismiss LRT's petition.<sup>10</sup>

### III. OTHER MATTERS

6. We note the following with regard to Comsat/Lockheed's claims that LRT and/or its members' primary aim is to harass Comsat and its successors and/or assigns by abusing the Commission's processes in order to cause Comsat and its successors and/or assigns to capitulate to LRT and/or its members' demands for compensation relating to a long ago corporate dispute involving the LRT members and Comsat. We take Comsat/Lockheed's claims very seriously. As described earlier in this order, there has been a documented pattern of conduct by LRT and/or its members with regard to Comsat and/or its successors or assigns that indeed appears to go beyond legitimate legal advocacy. In such cases, it is well-established that the Commission and its staff may impose sanctions upon parties participating in Commission proceedings if they file pleadings primarily for abusive purposes.<sup>11</sup> These sanctions could include restrictions on participation in Commission proceedings to prevent abuse of its processes.<sup>12</sup> In considering challenges to pending applications, "the Commission need [not] allow the administrative processes to be obstructed or overwhelmed by captious or purely obstructive protests."<sup>13</sup> The Commission has authorized its Bureaus and Offices to impose sanctions upon participants whose primary purpose is to abuse the Commission's processes.<sup>14</sup> Given the Commission's goal of encouraging participation in FCC proceedings, however, it only considers the possibility of such sanctions in egregious cases where the abusive nature of the pleadings is clear. In this regard, a pleading filed primarily to harass an applicant rather than to air legitimate, substantive objections relevant to the

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<sup>9</sup> *William L. Whitely, et al. v. FCC*, Case No. 00-4207 (2d Cir. June 1, 2001). The court dismissed LRT's petition for review on June 1, 2001, for failure to prosecute. On June 25, 2001, the court dismissed LRT's motion to reinstate its petition for review. On August 24, 2001, the court denied LRT's request that the court reconsider its order to dismiss LRT's original petition. In that order the court also granted the Commission's request that the court require LRT to pay the Commission's attorney's fees.

<sup>10</sup> Because we dismiss LRT's petition, we do not need to consider its arguments concerning forfeitures.

<sup>11</sup> *See, e.g.*, 47 U.S.C. § 503; *In re Application of Nationwide Communications, Inc., Memorandum Opinion and Order*, FCC 98-7, 13 FCC Rcd 5654, 5655-56 (1998) (*Nationwide Communications*).

<sup>12</sup> *See, e.g.*, *In re Applications of Radio Carrollton, et al., Memorandum Opinion and Order*, Docket Nos. 19636 and 19637, 69 FCC 2d 1138, 1148-55 (1978).

<sup>13</sup> *United Church of Christ v. FCC*, 359 F.2d 994, 1005 (D.C. Cir. 1966).

<sup>14</sup> *See* Public Notice, Commission Taking Tough Measures Against Frivolous Pleadings, FCC 96-42, 11 FCC Rcd 3030 (1996).

proceeding in which they are filed, is a situation that would justify a summary dismissal of such pleading.<sup>15</sup> Alternatively, should a party engage in such an abusive course of conduct before the agency, the Commission may decide to require the party to obtain the Commission's prior permission to file documents based on a prior showing of public interest.<sup>16</sup> We hereby expressly warn LRT and/or its members that they may face summary dismissal of their pleadings or the alternative procedure of prior screening of their pleadings should they file abusive or harassing pleadings with the agency.

#### **IV. CONCLUSION**

7. For the reasons shown above, we conclude that Comsat's acquisitions of stock in the referenced corporations were authorized by the Comsat capitalization plan that was in effect on the date on which it made the acquisitions. For this reason, we conclude that LRT has not shown that Comsat violated Section 201(c)(8) of the Satellite Act.

#### **V. ORDERING CLAUSES**

8. Accordingly, IT IS ORDERED that the above-referenced Petition for Declaratory Ruling of Litigation Recovery Trust is hereby DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>15</sup> See *Nationwide Communications*, 13 FCC Rcd at 5655-56.

<sup>16</sup> See *In re Martin-Trigona*, 592 F.Supp. 1566, 1568 (D. Conn. 1984); *In re Notice to John Cervase*, Letter from Vincent J. Mullins, Secretary, FCC, by direction of the Commission, FCC 75-891, 54 FCC 2d 1039 (1975).